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Case #_____

# SUPREME COURT OF THE UNITED STATES

**October Term 1999**

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**JOHN STANTON**

**Petitioner**

**v**

**DISTRICT OF COLUMBIA COURT OF APPEALS**

**Respondent**

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**JOHN STANTON**
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35pp

## QUESTIONS PRESENTED

1. May the District of Columbia (DC) Circuit exercise judicial notice to affirm the district court's refusal to make findings on petitioner's claim that respondent DC Court of Appeals operates an unconstitutional DC Bar disciplinary process?

2. May the DC Circuit disclaim jurisdiction over petitioner's claim that respondent construes DC Bar disciplinary rules unconstitutionally to require advocacy for guilty pleas by counsel for the accused in criminal prosecutions after respondent refuses to address the claim?

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## ORDER, CITATION

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**This petition is for review of the unreported DC Circuit order affirming dismissal of petitioner's action cited as *Stanton v DC Court of Appeals*, 326 USAppDC 404, 127 F3d 72 (1997), after an appeal from a previous dismissal.**

## JURISDICTION

Jurisdiction is under United States (US) Code §28-1254(1) for review of the 20 October 1999 DC Circuit order made final by the 28 December 1999 order denying rehearing and affirming dismissal of petitioner's civil rights action under US Code §§28-1331 (federal question) and 28-1343 (deprivation of federal rights under color of law). Copies of the 28 April 1999 district court dismissal memorandum and order, the DC Circuit affirmance order, and the DC Circuit order denying rehearing are appended.

## CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS INVOLVED

### US Constitution, Amendment I

"[There] shall [be] no law abridging freedom of speech."

### US Constitution, Amendment V

"No person shall be deprived of . . . property without due process of law."

### DC Bar Rule XI-9

"(g) Proceedings before the Court. (1) Upon the filing of exceptions under subsection (e) or (f) of this section and in all cases arising under section 8 in which the Board's

**all cases arising under section 8 in which the Board's recommended sanction includes a requirement that the attorney make a showing of fitness before reinstatement the Court shall schedule the matter for consideration in accordance with applicable court procedures. If the matter has come before the Court under subsection (f) of this section the Court may order the Board to file a report setting forth its findings of fact and the reasons for its decision. Upon conclusion of the proceedings or upon consideration of the report if no exceptions are filed the Court shall enter an appropriate order as soon as the business of the court permits. In determining the appropriate order the Court shall accept the findings of fact made by the Board unless they are unsupported by substantial evidence of record and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted."**

**DC Bar Rule XI-16**

**"(e) Petitions for reinstatement – Action by the Court. Upon the filing of the Board's findings and recommendation the Court shall schedule the matter for consideration in accordance with the general rules governing civil appeals. Whenever possible a petition for reinstatement shall be transmitted to the division of the Court which imposed the discipline. If the petition is unopposed the Court in its discretion may grant it or may enter any other appropriate order without further briefing or argument."**

**DC Bar Professional Conduct Rule 1.2(a)**

**"A lawyer shall abide by a client's decisions subject to paragraphs (c), (d), and (e) and shall consult with the client**

**shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case a lawyer shall abide by a client's decision after consultation with the lawyer as to a plea to be entered, whether to waive jury trial, and whether the client will testify."**

**DC Bar Professional Conduct Rule 1.3(a)**

**"A lawyer shall represent a client zealously and diligently within the bounds of the law."**

# SUPREME COURT OF THE UNITED STATES

**October Term 1999**

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**JOHN STANTON**
**Petitioner**

**v**

**DC COURT OF APPEALS**
**Respondent**

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## PETITION FOR WRIT OF CERTIORARI TO THE US COURT OF APPEALS FOR THE DC CIRCUIT

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## STATEMENT OF THE CASE

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Respondent DC Court of Appeals is authorized by Congress "[to] make such rules as it deems proper"[1] to regulate DC Bar membership and the practice of DC law. Petitioner, an attorney suspended by respondent from DC Bar membership and the practice of DC law for his "view of his role as a lawyer"[2] when assisting the accused in criminal prosecutions, claims that respondent's DC Bar Rules XI-9 and XI-16 violate due process of law and that respondent construes DC Rules of Professional Conduct 1.2(a) and 1.3(a) in violation of freedom of expression.

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[1] DC Code §11-2501(a).

[2] *In re Stanton*, 470 A2d 272, 281 (DC 1983), *cert denied* 466 US 972, 104 SCt 2347 (1984).

Respondent refuses to consider these claims in petitioner's reinstatement actions, the district court dismissed the due process claim for lack of standing and the freedom of expression claim for lack of subject matter jurisdiction, and the DC Circuit affirmed the dismissal of the due process claim as "refuted by facts of public record"[3] and the dismissal of the freedom of expression claim as "barred by the *Rooker-Feldman* doctrine."[4]

## Respondent's Disciplinary Process

Respondent DC Court of Appeals operates an unconstitutional DC Bar disciplinary process administered by the DC Bar Board on Professional Responsibility (BPR), which conducts factfinding hearings on disciplinary actions against DC Bar respondents and reinstatement actions by suspended or disbarred petitioners and reports findings and recommendations to respondent for entry of an appropriate order. BPR members take no oath to support the US Constitution, no payments are appropriated for their services, there is no "notice to the public in the process of appointing [BPR] members,"[5] and they meet and operate in

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[3] DC Circuit affirmance order, Appendix at 7A.

[4] DC Circuit affirmance order, Appendix at 6A, referring to *Rooker v Fidelity Trust Co*, 263 US 413, 44 SCt 149 (1923) - *DC Court of Appeals v Feldman*, 460 US 462, 103 SCt 1303 (1983), opinions that specify subject matter jurisdiction over claims of state/DC court judgments or decisions in violation of federal law as "general challenges to either the rulemaking authority or the administration of the rules," *DC Court of Appeals v Feldman* at 485, 103 SCt at 1316," and not mere "challenges to state-court decisions in particular cases," *Id* at 486, 103 SCt at 1317.

[5] *Stanton v DC Court of Appeals*, 326 USAppDC 404, 408, 127 F3d 72, 76 (1997). Members of DC Government agencies must take an oath to support the US Constitution (DC Code §1-501), receive appropriated payments for their services (DC Code §1-503), open their meetings at which official action is taken to the public (DC Code §1-1504), and

secrecy with no provision for public notice of or participation in BPR rulemaking and other official actions.

The BPR factfinding process is fundamentally unfair. In disciplinary actions respondents have no right to rulings on legal challenges to the allegations against them before factfinding on the allegations but the BPR may dismiss reinstatement actions for legal insufficiency before any factfinding. The BPR is not bound by rules of evidence or procedure and may report and recommend whatever it sees fit.

Nevertheless, respondent DC Court of Appeals defers to BPR findings and recommendations in DC Bar disciplinary and reinstatement actions as if made by a duly constituted, properly operating DC Government agency:

> Our consideration of [BPR] findings and recommendations is similar to our review of administrative agency decisions.[6]

This undue deference or practice of "unduly limited review powers of [respondent] over the [BPR]"[7] is the basis for petitioner's due process claim.

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provide public notice of proposed rulemaking and other official actions (DC Code §1-1506).

[6] *Matter of James*, 452 A2d 163, 169 (DC 1982), *cert denied* 460 US 1038, 103 SCt 1429 (1983). On review of DC Government administrative agency actions generally respondent says, "An agency's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence," *DC v Davis*, 685 A2d 389, 393 (DC 1996), "we must defer to an agency's interpretation of the statute which it administers," *Ibid*, and "[w]e refrain from substituting our judgment in areas of expertise reserved for the agency," *Id.*

[7] *Stanton v DC Court of Appeals*, 326 USAppDC at 408, 127 F3d at 76.

## Respondent's Disciplinary Actions against Petitioner

Respondent ordered petitioner's suspension from practice by summary adoption of BPR findings and recommendations, ignoring and disregarding his claims of "constitutional infirmities"[8] in the BPR process. In petitioner's reinstatement actions the BPR "gauge[s] the compatibility between his philosophical beliefs and his obligations to advise and carry out the wishes of individual clients who may . . . want to plead guilty"[9] according to respondent's construction of Rules 1.2(a) and 1.3(a) obligating counsel "[to] assume the role of an advocate for a client who desire[s] to plead guilty,"[10] "articulate the guilty plea of a client in court and . . . convince the judge of the voluntariness of a guilty plea of a client."[11]

Petitioner believes respondent's construction is unconstitutional because counsel's advocacy for guilty pleas is a coercive and corrupt practice that makes guilty pleas invalid by violating the right of the accused to voluntary self-incrimination. In his reinstatement actions petitioner has "amended his position"[12] and "further refined his position"[13] in a series of efforts "to comply with the rulings of the DC Court of Appeals so long as they remain in force regardless of his view of their apparent wisdom or folly unless a ruling conflicts with a higher duty and causes harm that his conscience cannot countenance

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8 *Matter of Stanton*, 532 A2d 95, 96 (DC 1987).

9 *In re Stanton*, 682 A2d 655, 658 (DC 1996), *cert denied* 522 US 817, 118 SCt 67 (1997).

10 *In re Stanton*, 589 A2d 425, 426 (DC 1991), *cert denied* 502 US 1098, 112 SCt 1178 (1992).

11 *In re Stanton*, 589 A2d at 426.

12 *In re Stanton*, 682 A2d at 656.

13 *In re Stanton*, 682 A2d at 657/

**or condone,"[14] but his efforts to comply by constitutional means have been unavailing while respondent DC Court of Appeals consistently ignores and disregards and never considers his constitutional claims.**

**Petitioner's Constitutional Claims**

**Unable to obtain consideration of these claims in his reinstatement actions before respondent DC Court of Appeals, petitioner in October 1995 presented them to the US District Court for DC in a civil action claiming respondent's deprivation of due process and freedom of expression rights under color of rulemaking for regulation of the practice of DC law.**

**The district court abstained and dismissed petitioner's action "because of the pending proceeding in the DC judicial system,"[15] where petitioner had a reinstatement action pending, despite his allegation that respondent refuses to consider his claims. Petitioner appealed the abstention dismissal to the DC Circuit, which took no action, even after respondent DC Court of Appeals again denied reinstatement without considering his constitutional claims, until petitioner came here for a writ of certiorari before judgment, and the DC Circuit then finally referred the appeal to a "merits panel"[16] which decided "[to] affirm the district court's dismissal of the [freedom of expression] claim, . . . reverse the judgment regarding [petitioner's due process claim], and remand the**

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[14] *In re Stanton*, 682 A2d at 657.

[15] *Stanton v DC Court of Appeals*, 326 USAppDC at 406, 127 F3d at 74.

[16] *Stanton v DC Court of Appeals*, DC Circuit #96-7041, 14 January 1997 merits panel referral order.

case"[17] to the district court.

On remand the district judge, a recent DC Bar president and close associate of respondent DC Court of Appeals, stayed all discovery of proof of petitioner's claims and dismissed them for the second time, ruling that petitioner "would not have standing to pursue his generalized due process claim."[18] Petitioner appealed again to the DC Circuit.

## Proceedings on Appeal from the Second Dismissal

Respondent DC Court of Appeals conceded on remand to the district court that review of BPR findings and recommendations is limited in disciplinary actions but argued that in reinstatement actions full review is the rule. Respondent cited opinions in two reinstatement actions as support for this argument. In the first cited opinion respondent stated

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[17] *Stanton v DC Court of Appeals*, 326 USAppDC at 411-412, 127 F3d at 79-80. The DC Circuit then expressly found that respondent DC Court of Appeals "has not considered," *Id* at 409, 127 F3d at 77, petitioner's claims.

[18] District court dismissal memorandum, Appendix at 3A. The district court also denied petitioner's motion to amend and restore the freedom of expression claim as "barred by the *Rooker-Feldman* doctrine," DC Circuit affirmance order, Appendix at 6A. The amendment changes the wording of the claim from "[Respondent's] DC Rules of Professional Conduct 1.2(a) and 1.3(a) obligate DC Bar members to articulate guilty pleas for the accused" to "[Respondent] construes and administers DC Rules of Professional Conduct 1.2(a) and 1.3(a) to obligate DC Bar members to articulate guilty pleas for the accused." The amendment responds to the DC Circuit's bafflement "at how any facial First Amendment attack on the two rules might be framed," *Stanton v DC Court of Appeals*, 326 USAppDC at 408, 127 F3d at 76.

> The BPR's findings and recommendations are, of course, entitled to great weight. Before an attorney is reinstated, however, this court must be independently satisfied that the criteria for reinstatement have been met. In disciplinary cases we are required by rule to accept the findings of the BPR if they are supported by substantial evidence. No such requirement appears in the rule governing reinstatements; on the contrary, the rule makes clear that the recommendation of the BPR is only a recommendation and that the determination of fitness to resume the practice of law rests entirely with this court.[19]

The second cited opinion restated the distinction along with the reference to the "great weight"[20] respondent gives to BPR findings and recommendations:

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[19] *In re Roundtree*, 503 A2d 1215, 1217 (DC 1985) (citations and footnote omitted). In fact respondent has cited DC Bar Rule XI-9 in reinstatement actions, ruling that "the Court shall accept the findings of fact made by the [BPR]," *In re Brown*, 617 A2d 194, 197 (DC 1992). See also *In re Stanton*, 682 A2d at 658 ("We defer to the [BPR] on findings of fact," citing *In re Kennedy*, 605 A2d 600 (DC 1992), a disciplinary action).

[20] The term "great weight" echoes the command that "courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute," *Investment Company Institute v Camp*, 401 US 617, 626-627, 91 SCt 1091, 1097 (1971).

> Although the recommendations of the [BPR] are entitled to great weight this court must determine independently whether an attorney meets the criteria for reinstatement.[21]

Petitioner cited later opinions where respondent says BPR recommendations may be treated as virtually self-executing in reinstatement actions as well as in disciplinary actions:

> We are required to accept the findings of fact made by the [BPR] unless they are unsupported by substantial evidence of record and shall adopt the recommended disposition of the BPR.[22]

As to petitioner's freedom of expression claim respondent DC Court of Appeals argued that *Rooker-Feldman* remains a jurisdictional bar regardless of petitioner's amendment after the remand. Petitioner argued that respondent's unconstitutional construction of the disciplinary rules is subject to general constitutional challenge and that the district court was wrong to deny amendment and restoration of the claim for that reason.

The DC Circuit discarded the district court ruling that petitioner would not have standing to pursue his due process claim, instead crediting respondent's argument

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21 *In re Bettis*, 644 A2d 1023, 1027 (DC 1994).

22 *In re Jamison*, 726 A2d 690 (DC 1999), also *In re Fogel*, 728 A2d 668 (DC 1999) ("considerable deference" to BPR determinations the general practice in DC Bar reinstatement actions), *In re Blondes*, 732 A2d 262 (DC 1999) (same).

that the claim is "refuted by facts of public record" found in the two opinions respondent cited. The district court's dismissal of the freedom of expression claim under *Rooker-Feldman* was affirmed.

Petitioner argued for rehearing that the DC Circuit abused judicial notice in converting the dismissal of the due process claim to a summary judgment on appeal and that the finding so made is demonstrably untrue. On the freedom of expression claim petitioner argued that *Rooker-Feldman* is no bar because respondent DC Court of Appeals did not consider the claim while denying petitioner reinstatement after the district court's first dismissal "on grounds of abstention because of the proceedings in the DC judicial system."[23]

The DC Circuit has denied rehearing so petitioner is back again seeking consideration of his claims.

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## ARGUMENT

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Petitioner's claims are important not just because of the rampant manifest injustice but because they indicate an institutional breakdown of the rule of law between the DC Bar and the court that created it. The DC Circuit compels review by its delay and evasion of petitioner's claims in a departure from usual and accepted proceedings involving violation of Rule 201 of the Federal Rules of Evidence and application of the *Rooker-Feldman* doctrine in conflict with applications in decisions of other circuits.

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[23] *Stanton v DC Court of Appeals*, 326 USAppDC at 406, 127 F3d at 74.

## The DC Circuit Violated Rule 201 of the Federal Rules of Evidence to Evade Petitioner's Due Process Claim

Under Rule 201(b)[24] a judicially noticed fact must not be subject to reasonable dispute. The DC Circuit converted the district court's dismissal of petitioner's due process claim into a summary judgment by taking judicial notice of "facts of public record"[25] in such dispute that the district court, biased in favor of respondent DC Court of Appeals, refused to allow a request for admissions, treated petitioner's discovery as "a pipe dream,"[26] and dismissed on the pretext of standing rather than make findings of fact.

The fact is that respondent DC Court of Appeals may give "considerable deference" to BPR findings and recommendations in both disciplinary actions under DC Bar Rule XI-9 and reinstatement actions under DC Bar Rule XI-16. Under Rule XI-9 respondent DC Court of Appeals "shall accept the findings of fact made by the [BPR] . . . and shall adopt the recommended disposition of the [BPR]" except in instances defined so imprecisely and elusively that in practice respondent may treat BPR recommendations as virtually self-executing whenever

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[24] Rule 201(b), Federal Rules of Evidence: "Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

[25] Only "an undisputed fact in the public record," *General Electric Capital Corp v Lease Resolution Corp*, 128 F3d 1074, 1081 (CA7 1997), permits "judicial notice of matters of public record without converting a motion for failure to state a claim into a motion for summary judgment," *Id* at 1080.

[26] District court dismissal memorandum, Appendix at 2A.

expedient for extralegal reasons or purposes. Rule XI-16 is silent on the review standard but as the ultimate determination in any disciplinary or reinstatement action is the same, the fitness of the respondent or petitioner for the practice of DC law, the standard is presumably the same, and the latest "published cases"[27] say it is the same.

Giving "great weight" to BPR findings and recommendations, respondent DC Court of Appeals considers them as similar to those of a duly constituted, properly operating DC Government agency charged with enforcement of the DC Bar Rules of Professional Conduct and making interpretations of those regulations entitled to "great weight"[28] because of the BPR's experience, technical competence, and specialized knowledge. From this premise it follows that BPR findings of fact and conclusions of law must be affirmed, adopted, or sustained if supported by substantial evidence, that respondent must defer to BPR interpretations of the Rules of Professional Conduct, and should refrain from exercising judgment in areas of expertise reserved for the BPR. In this way the review process becomes circular, beginning and ending with findings and recommendations reported by unsworn, unpaid BPR members operating in secrecy with no public

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[27] District court dismissal memorandum, Appendix at 3A.

[28] "The organized bars, operating under codes approved by the highest state courts pursuant to statutory authority, have the primary responsibility for assuring compliance with professional ethics and standards by the . . . lawyers licensed in the United States. The means employed usually are disciplinary proceedings initially conducted by voluntary bar committees *subject to judicial review*," *Ohralik v Ohio State Bar Association*, 436 US 447, 466, 98 SCt 1912, 1924 (1978) (emphasis supplied), meaning full, not unduly limited, review. The "state's interest in regulating members of the bar in an effective, objective, and *self-enforcing* manner," *Id* at 467, 98 SCt at 1924 (emphasis supplied), is not served by what amounts to runaway self-regulation under limited review.

notice of or participation in their official actions.

The result is a serious deprivation of due process of law because respondent's review process induces in the minds of its decision makers a sense of detachment from full appreciation of their responsibilities. The BPR is not fully responsible or accountable for its recommendations because BPR members know that ultimate responsibility for decisions in disciplinary or reinstatement actions is or should be with respondent DC Court of Appeals, yet the court disclaims ultimate responsibility by deferring to the BPR. Such undue deference to BPR interpretations of the DC Bar disciplinary rules to suit the interests and opinions of BPR members is the cause of the unconstitutional result which is the construction of the rules to require advocacy for guilty pleas by counsel for the accused in criminal prosecutions.

## The DC Circuit Applied the *Rooker-Feldman* Doctrine in Conflict With Other Circuits to Evade Petitioner's Freedom of Expression Claim

Under respondent's present construction of DC Bar Rules of Professional Conduct 1.2(a) and 1.3(a) an attorney may be subjected to disciplinary action for "inability to draw workable distinctions between his philosophical beliefs and his ethical obligations to his clients"[29] "to assume the role of an advocate for a client who desires to plead guilty"[30] or "who may, due to any number of circumstances,

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[29] *In re Stanton*, 682 A2d at 658.

[30] *In re Stanton*, 682 A2d at 658, *In re Stanton*, 589 A2d at 426, *Matter of Stanton*, 532 A2d at 97.

including an aversion to the risks of trial, want to plead guilty."[31] Respondent DC Court of Appeals says this obligation of advocacy for guilty pleas is "imposed by the canons of ethics on an attorney representing a criminal defendant,"[32] and the BPR says it is embodied in DC Bar Rules of Professional Conduct 1.2(a) and 1.3(a). The requirement on counsel to pursue or advocate for guilty pleas by articulating the guilty plea of the client and convincing a judge of the voluntariness of a guilty plea is of general application and not merely an aspect of respondent's disciplinary actions against petitioner.

The DC Circuit says only a "facial First Amendment attack on the two rules"[33] can survive the jurisdictional bar of *Rooker-Feldman*, which in fact refers to "general challenges to state bar rules,"[34] not facial attacks on them, a narrower, more restrictive view of subject matter jurisdiction in conflict with the decision that under *Rooker-Feldman* federal courts may consider general challenges to bar rules "as promulgated and as construed by state case law."[35]

The DC Circuit's affirmance of the dismissal under *Rooker-Feldman* of petitioner's "revised First Amendment"[36] claim is also faulty and in conflict with

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[31] *In re Stanton*, 682 A2d at 658.

[32] *Matter of Stanton*, 589 A2d at 426.

[33] *Stanton v DC Court of Appeals*, 326 USAppDC at 408, 127 F3d at 76.

[34] *DC Court of Appeals v Feldman*, 460 US at 487, 103 SCt at 1317.

[35] *Razatos v Colorado Supreme Court*, 746 F2d 1429, 1434 (CA10 1984), *cert denied* 471 US 1016, 105 SCt 2019 (1985). In both federal and state domains "[o]nce the Supreme Court has interpreted a statute, that construction becomes a part of the statute," *Ferguson v Estelle*, 718 F2d 730, 733 (CA5 1983), and necessarily included in the consideration of any general challenge.

[36] DC Circuit affirmance order, Appendix at 6A.

decisions in other circuits because the second dismissal followed the refusal of respondent DC Court of Appeals to address or consider petitioner's claims in the "pending proceedings in the DC judicial system" although the first dismissal was an abstention to afford respondent an opportunity to consider them. The Third Circuit says if a litigant raises a constitutional claim in state court and that court refuses to address it "the litigant can then raise the claim in federal court without any jurisdictional, abstention, or collateral estoppel problems."[37] Petitioner raised his claims before respondent DC Court of Appeals, which refused to address them, yet the DC Circuit says petitioner's freedom of expression claim still has a *Rooker-Feldman* jurisdictional problem.

The DC Circuit is therefor doubly wrong in applying *Rooker-Feldman* against petitioner's freedom of expression claim, which is based on his reasonable belief that counsel's advocacy for guilty pleas makes them involuntary and invalid. It is indisputable that a guilty plea cannot be valid if involuntary. Voluntariness is the "long-standing test for determining the validity of a guilty plea."[38] DC Superior Court Criminal Procedure Rule 11(d)[39] and the federal counterpart reflect decisions on the importance of direct dialog between courts and defendants in the voluntariness determination:

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[37] *Gulla v North Strabane Township*, 146 F3d 168, 173 (CA3 1998), *Guarino v Larsen*, 11 F3d 1151, 1161 (CA3 1993). Where "a state action does not reach the merits of a plaintiff's claims then *Rooker-Feldman* does not deprive the federal court of jurisdiction," *Whiteford v Reed*, 155 F3d 671, 674 (CA3 1998).

[38] *Hill v Lockhart*, 474 US 52, 54, 106 SCt 366, 369 (1985).

[39] Rule 11(d): "The court shall not accept a plea of guilty or *nolo contendere* without first by addressing the defendant personally in open court and determining that the plea is voluntary."

> To the extent that the district judge thus exposes the defendant's state of mind on the record through personal interrogation he not only facilitates his own determination of a guilty plea's voluntariness but he also facilitates that determination in any subsequent post-conviction proceeding based upon a claim that the plea was involuntary. Both of these goals are undermined in proportion to the degree the district judge resorts to "assumptions."[40]

Counsel's advocacy in articulating a guilty plea and convincing a judge of its voluntariness does not serve the purpose of exposure of the defendant's actual state of mind and may undermine the determination of voluntariness. Advocacy proceeds on assumptions. A defendant suffering misgivings, reservations, or second thoughts may feel pressured and intimidated and reluctant to contradict counsel's articulation of his guilty plea and advocacy for its acceptance. He may fear to offend the judge by backing out of a plea agreement announced by counsel.

Petitioner believes the best practice is to allow a defendant "to announce his decision to plead guilty in open court by saying, 'Judge, I want to plead guilty,' at the inception of the proceedings"[41] or whenever he feels ready to accept the prosecutor's plea offer. This practice seems to provide the best assurance of voluntariness because the announcement comes directly from the defendant.

Respondent DC Court of Appeals proscribes this

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[40] *McCarthy v United States*, 394 US 459, 467, 89 SCt 1166, 1171 (1969).

[41] *In re Stanton*, 682 A2d at 657.

constitutional practice as based on "esoteric philosophical views,"[42] but "the right to speak and the right to refrain from speaking are complementary components of a broader concept of individual freedom of mind"[43] which is denied by requiring counsel to speak for the accused according to an respondent's unconstitutional construction. Petitioner believes counsel's advocacy for guilty pleas should not be permitted, let alone required, and no federal, state, or territorial court but respondent DC Court of Appeals goes so far as to require it.

JOHN STANTON
2101 New Hampshire Ave NW
Washington, DC 20009
(202) 232-5369

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[42] *In re Stanton*, 682 A2d at 660. Respondent DC Court of Appeals seems unaware that "views and beliefs are immune from bar association inquisitions designed to lay a foundation for barring an applicant from the practice of law," *Baird v State Bar of Arizona*, 401 US 1, 8, 91 SCt 702, 707 (1971).

[43] *Wallace v Jaffre*, 472 US 38, 52, 105 SCt 2479, 2487 (1985).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
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| JOHN STANTON, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | Civil Action No. 95-1952 |
| | : | |
| | : | |
| DISTRICT OF COLUMBIA COURT OF APPEALS, | : | FILED<br>APR 28 1999<br>NANCY MAYER-WHITTINGTON, CLERK |
| | : | |
| Defendant. | : | |

## MEMORANDUM

Plaintiff is a suspended attorney who asserted constitutional challenges to substantive provisions of the District of Columbia Rules of Professional Conduct and to procedures governing reinstatement. The Court of Appeals affirmed the dismissal of defendant's substantive First Amendment claims but remanded two other claims alleging violations of due process. Stanton v. District of Columbia Court of Appeals, 127 F.3d 72 (D.C. Cir. 1997), reh'g denied (Dec. 3, 1997). Now before the court is defendant's motion to dismiss filed December 27, 1997, and plaintiff's motion to amend his complaint filed April 7, 1999.[1]

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[1] During eleven of the sixteen months that have elapsed since the filing of the instant motion to dismiss, plaintiff has been seeking my recusal, by motion filed in this Court and by petitions for mandamus filed in the Court of Appeals and in the Supreme Court. I did not consider it appropriate to rule on the pending motion while these motions and petitions were pending.

Set forth below are the reasons for an order, entered today, denying plaintiff's motion to amend and granting defendant's motion to dismiss.

The District of Columbia Court of Appeals has promulgated rules regulating the District of Columbia's unified bar pursuant to legislative authority delegated to it by Congress. See 84 Stat. 473, 521 (1970), codified at D.C. Code 11-2501(a). Count 1, the first of the two remanded counts, asserts that the rule establishing the Board on Professional Responsibility (BPR) and describing its duties, District of Columbia Rule of Professional Conduct XI (4) (1990), deprives Mr. Stanton of due process. Because Count 1 addresses the promulgation or content of rules, the defendant is absolutely immune from suit under this claim. Supreme Court of Virginia v. Consumers Union, 446 U.S. 719 (1980).

In Count 2, Mr. Stanton asserts that the Bar's rules concerning disciplinary and reinstatement actions, District of Columbia Rules of Professional Conduct XI (9) and XI (16) (1990), deprive him of due process. This claim is not barred by the absolute immunity recognized in the Consumers Union case because it is more about the application or enforcement of rules than about promulgation or conduct, but it is not a claim upon which relief may be granted. Mr. Stanton cannot pursue the claim as it relates to rulings in his own case because of the Rooker-Feldman doctrine. See generally Rooker v. Fidelity Trust, 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). His fallback position, that discovery would reveal that the D.C. Court of Appeals generally gives undue deference to the rulings of the Board on Professional Responsibility, fares no better. The prospect of discovery to determine why appellate courts decide as they do is tempting to a trial judge, but, of course, it is a pipe dream. We can only consult the opinions of

courts to construct their thought processes. The degree of deference paid by the D.C. Court of Appeals to the BPR can be discovered, for example, in In the Matter of James, 452 A.2d 163, 169 (D.C. 1982), and in In re Roundtree, 503 A.2d 1215, 1217 (D.C. 1985). From anything that appears in the published cases, it seems that the D.C. Court of Appeals is doing what courts of appeals are supposed to do: confronting one case at a time. Nothing suggests undue deference.

Even if Mr. Stanton had evidence of undue deference by the D.C. Court of Appeals to BPR decisions, he would not have standing to pursue his generalized due process claim. See Richardson v. D.C. Court of Appeals, 83 F.3d 1513, 1516 (D.C. Cir. 1996).

The proposed amended complaint lodged with plaintiff's latest motion to amend would replace existing count 2 ("Deprivation of Right to Due Process of Law") with a different count 3 ("Deprivation of Right to Due Process of Law"). The proposed new version would essentially abandon the generalized claim discussed above and replace it with a claim that the D.C. Court of Appeals has failed to consider and adjudicate Mr. Stanton's allegations of due process in his own case. This count mentions 42 U.S.C. § 1983 in passing, but Mr. Stanton may not bring such a claim under § 1983 against a court. Stump v. Sparkman, 435 U.S. 349, reh'g denied 436 U.S. 951 (1978); cf. Forrester v. White, 484 U.S. 219, 227 (1988). Such a claim would in any event run straight into the Rooker-Feldman doctrine again.

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge

Dated: April 28, 1999

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| JOHN STANTON, | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | Civil Action No. 95-1952 |
| | : | |
| | : | |
| DISTRICT OF COLUMBIA | : | FILED |
| COURT OF APPEALS, | : | APR 28 1999 |
| | : | NANCY MAYER-WHITTINGTON, CLERK |
| Defendant. | : | |

ORDER

For the reasons set forth in a memorandum issued today, it is on this 28th day of April, 1999,

ORDERED that plaintiff's motion for leave to file amended complaint is denied. And it is

FURTHER ORDERED pursuant to F.R.Civ.P. 12(b)(6) that defendant's motion to dismiss is granted. This case is dismissed.

JAMES ROBERTSON
United States District Judge

# UNITED STATES COURT OF APPEALS
## FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7093

September Term, 1999
95cv01952

John Stanton,
Appellant

v.

District of Columbia Court of Appeals,
Appellee

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
OCT 20 1999
CLERK

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for summary reversal, the opposition thereto, and the reply; and the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted, and the motion for summary reversal be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc., v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam) cert. denied, 449 U.S. 994 (1980).

Because appellee's motion for summary affirmance accompanied its timely response to appellant's motion for

summary reversal, appellant's argument that the motion for summary affirmance should be denied as untimely is without merit. See Fed. R. App. P. 27(a)(3)(B). With respect to the district court's denial of appellant's two motions for disqualification, appellant has offered no evidence to demonstrate that the district court's rulings "display a deep-seated favoritism or antagonism that would make fair judgment impossible." See Liteky v. United States, 510 U.S. 540, 555 (1994). Nor has appellant shown that the district court judge's status as past president of the D.C. Bar resulted in impermissible bias. See United States v. Morrison, 153 F.3d 34, 48 (2d Cir. 1998). Accordingly, the district court's determinations were not an abuse of discretion. See United States v. Pollard, 959 F.2d 1011, 1031 (D.C. Cir. 1992).

In regard to appellant's motions to amend his complaint, any error committed by the district court in failing to allow appellant to amend his complaint once as a matter of right was harmless. Cf. Bowden v. United States, 176 F.3d 552, 555 (D.C. Cir. 1999). Appellant's proposed revisions to his existing due process claims were unnecessary as they changed neither the factual allegations nor the legal theory of the complaint. Moreover, the district court correctly concluded that appellant's revised First Amendment and new due process claims are barred by the Rooker-Feldman doctrine. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 415 (1923) (federal courts lack jurisdiction to review decisions by state and District of Columbia courts).

With respect to the dismissal of appellant's remanded claims, the district court correctly determined that appellant's claim concerning the "undue construction

and improper operations" of the Board on Professional Responsibility under D.C. Bar Rule XI-4 is barred by legislative immunity. See Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719 (1980). Further, the district court correctly dismissed appellant's challenge to the review procedures for disciplinary and reinstatement proceedings because appellant's claim that appellee unduly defers to Board decisions is refuted by facts of public record. See Phillips v. Bureau of Prisons, 591 F.2d 966, 969 (D.C. Cir. 1979). Finally, the district court did not abuse its discretion in staying discovery on appellee's motion to dismiss. See Willoughby v. Potomac Elec. Power Co., 100 F.3d 999, 1003 (D.C. Cir. 1996).

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

# UNITED STATES COURT OF APPEALS
## FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99-7093 September Term, 1999
95cv01952

John Stanton,
Appellant

v.

District of Columbia Court of Appeals,
Appellee

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED

DEC 28 1999

CLERK

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed November 18, 1999, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Robert A. Bonner
Deputy Clerk